

DOCKET NO.: THOM-0039
Application No.: 10/522,825
Office Action Dated: August 27, 2007

PATENT

Amendments to the Drawings

The attached sheets of drawings include the addition of Figs 5. The sheets, which include Figs 1-5, replace the original sheets including Figs 1-4.

Attachment: 2 Replacement Sheet(s)

REMARKS

Objection To The Drawings:

The drawings have been objected to for failing to show every feature of the invention specified in the claims. In particular, (1) the tear element attached to the zipper by a peel seal material, (2) the tear element coated with a peel seal material, and (3) the tear element comprising a strip or tape are allegedly not shown. As discussed with the Examiner, Applicant has added new FIG. 5 which schematically shows the features of 1 and 2 above. Applicant has also amended the specification to include description of new FIG. 5. No new matter is added by new FIG. 5 and the added description, as the text of the application fully supports the pending claims and drawing amendment. (See paragraph 6 of page 1 and paragraph 1 of page 3, for example). Furthermore, as discussed with the Examiner, Applicant has amended the specification to clarify that the tear string 16 may also be a strip or tape. (See paragraph 5 of page 1, for example). Therefore, the tear string 16 schematically shown in the figures may also be adequate description of embodiments comprising a strip or tape. No new matter is added by such amendment. Now that all features of the invention specified in the claims are shown in the figures, Applicant respectfully requests withdrawal of the objection.

Objections To The Specification:

The disclosure is objected to because the section headings are missing. Applicant has added section headings to the specification. Accordingly, Applicant requests withdrawal of the objection.

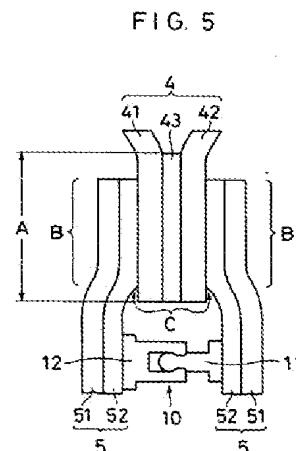
Additionally, the office action asserts that Applicant incorporated essential material in the specification by reference to an unpublished foreign application. Applicant disagrees with this assertion. EP-A-0951989 is a published application and thus properly incorporates by reference its material. Accordingly, Applicant requests withdrawal of the objection.

Claim Rejections:

Claims 1-12 are pending. Claims 6-12 are withdrawn. Claims 1, 2, 4, and 5 stand rejected, and claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim. Claim 1 has been amended, claim 3 has been canceled, and claim 15 is new.

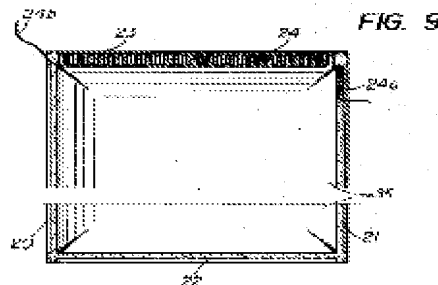
New claim 15 is claim 3 written in independent form. Accordingly, Applicant submits that claim 15 is in condition for allowance.

Claims 1, 2, 4, and 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,330,269 (Kamada). Independent claim 1 has been amended to clarify that the top seal is formed by sealing opposed wall portions of the bag together. Kamada does not disclose such a structure. As shown in FIG. 5 (at right), Kamada discloses a bag having a laminate 4 of tapes located between substrates 51 (i.e. wall portions of the bag). In particular, Kamada discloses a bag having several layers, including 51, 52, 41, 42, and 43. As shown, layers 41 and 42 are sealed to substrate 51 via heat sealing layer 52, and layers 41 and 42 are sealed together via a peel-seal layer 43.



Therefore, because substrates 51 are not sealed together, Kamada does not disclose a bag having a top seal formed by sealing opposed wall portions of the bag together, as claimed. Accordingly, Applicant requests withdrawal of the 102(b) rejection.

Claims 1, 4, and 5 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,680,689 (Grundschober) in view of Kamada. As stated above, independent claim 1 has been amended to clarify that the top seal is formed by sealing opposed wall portions of the bag together. Grundschober does not disclose such a structure. The top seal of Grundschober is formed not between the wall portions of the bag, but by an adhesive mass 23 in which an undulating filament 24 is embedded. Therefore Grundschober does not teach a top seal formed by sealing opposed wall portions of the bag together as claimed. Furthermore, independent claim 1 recites that the elongate tear element extends through a portion of the top seal to protrude from the top of the bag. The elongate element 24 of Grundschober, does not extend through a portion of the top seal of the bag, but is embedded within the adhesive mass 23 along the full length of the top opening (as shown at right). Therefore,



Grundschober also does not teach a bag having an elongate tear element that extends through a portion of the top seal to protrude from the top of the bag as claimed. In order to prove a prima facie case of obviousness all of the limitations of the claims must be disclosed in the references. Because, neither Grundschober nor Kamada disclose all of the limitations of the claims, Applicant requests withdrawal of the 103 rejection.

Additionally, the Office Action alleges that it would have been obvious to provide the bag of Grundschober with the reclosable zipper of Kamada, in order to make the bag reclosable. Applicant respectfully disagrees with this assertion. The office action incorrectly concludes, without reasoning or explanation, that it would have been obvious to use the bag of Grundschober in combination with the reclosable zipper of Kamada to arrive at the claimed invention. For example, the package of Grundschober has its own means for resealing of the package when opened. (*See e.g.* 4:49-50). This resealing means comprises the adhesive mass 23 in which the elongate element extending along the top edge of the bag is embedded. Since Grundschober claims to already provide a bag that is resealable there would be no reason to look to Kamada. A proper case for prima facie obviousness must include motivations to combine that are “articulated reasoning with some rational underpinning.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007)(“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”). Unsupported assertions are not adequate. As a result, the office action has not met its burden of providing “articulated reasoning with some rational underpinning” as to why a person of ordinary skill in the art using common sense at the time of the invention would reasonably look to Kamada to solve a problem already said to be solved Grudschober. Absent such a showing, Applicant respectfully requests the Office withdrawal its rejection.

For all of the forgoing reasons, Applicant respectfully submits that claims 1 and 15

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are in condition for allowance. Because claims 2, 4, and 5 depend from claim 1, Applicant respectfully submits that they too are in condition for allowance.

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/Harold H. Fullmer/
Harold H. Fullmer
Registration No. 42,560

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439